IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JRISDICTION

FIRST APPEAL NO. 57 of 1999

The New India Assurance co...Appellants

V/s

1. Shri Balkrishna Shantaram Dhume

since decesed

1A Smt.Vidya B.Dhume

2. Smt.Kamal B. Dhume

3. Mr.Madhukar S. Sawant ..Respondents

Mr.M.G.Barve for Appellants

Mr.S.A.Sawant for Respondent no.3

Mr.A.S.Khandeparkar for Respondent No.1(A) and 2

CORAM:D.G.DESHPANDE,J.

DATED:2nd March 2005

ORAL JUDGMENT :-

1. Heard the Advocates for the Appellant and Respondents.

2. The Appellant is Insurance Company and the appeal is filed challenging the judgment of Tribunal by which the Insurance Company was held liable to pay amount of compensation to the Respondent claimant jointly and

severally along with owner of the vehicle.

3. Only one contention was raised by the Counsel for the Appellant and that is from the facts proved on record before the Tribunal that accident of the vehicle took place on 9-5-1994 and policy of insurance was issued to the owner of the vehicle by his payment of cheque to the Insurance Company dated 6-12-1993. The cheque was given to the Bank for encashment on 16-12-1993. It was dishonoured and on 31-12-1993 the Insurance Company intimated and informed the owner of the vehicle by Registered Post acknowledgment due that because of dishonour of cheque the Policy is cancelled. Therefore, according to the Insurance Company they are not liable because there was no insurance policy in existence on the date of the said accident.

4. Mr.Barve, Counsel appearing for the Appellant pointed out that reliance is placed by the Tribunal on the judgment of the Supreme Court reported in AIR 1998 Supreme Court page 588 Oriental Insurance Co. ltd. V/s Inderjit Kaur and Ors. In this case the Supreme Court lay emphasis on the public duty of the Insurance Company. In the facts of the said case where a bus met with an accident . Its policy of insurance was issued by the Appellant on 30-11-1989. The premium for the policy was paid by cheque. The cheque was dishonoured. A letter stating that it had been

dishonoured was sent by the Appellant to the insured on 23-1-1990. The letter claimed that, as the cheque had not been encashed, the premium on the policy had not been received and that, therefore, the appellant was not at risk. The premium was paid in cash on 2-5-1990. In the meantime on 19-4-1990, the accident took place. It was in this peculiar background the Supreme Court held that Insurance Company was liable to pay.

5. In my opinion this judgment will not help to the owner in the present case, because 5 months before the accident, to be specific that accident took place on 9-5-1994 and by letter dated 31-12-1993 the Insurance Company had intimated the owner that his policy is cancelled because of dishonour of the cheques. Issuance of the cheque by the owner towards premium and cancellation of the policy took place within 7 months i.e. from 9-12-1993 to it and intimation of cancellation was given by the Insurance Company on 31-12-1993. In the case before the Supreme Court, may be after the date of accident the premium was paid in cash in the year 1990. In the instant case no such attempt was made by the owner of the vehicle to pay the premium during this period from 31-12-1993 to 9-5-1994 or some time thereafter the accident. In these circumstances it cannot be said that there was a concluded contract or agreement between the owner of the vehicle and the Insurance Company. Three was no

policy existing on the said date of the accident and therefore reliance placed by the Tribunal on the aforesaid judgment was not proper.

6. Consequently the appeal is required to be allowed. I pass the following order :

ORDER

i. The appeal is allowed. The impugned judgment and order of the Tribunal is partly modified. The Appellant Insurance Company is exonerated from the liability to pay the compensation. In the circumstances there will be no order as to costs.

ii. The appellant will be entitled to withdraw the amount deposited in the trial Court.

iii. Counsel for the Claimant - Respondent nos.1 and 2 prays that the owner of the vehicle i.e. Respondent no.3, in view of the aforesaid order, be directed to deposit the amount of compensation in this Court because Respondent no.1 is an old lady about 75 years of age. In the circumstances the owner of Respondent no.3 to deposit the amount of compensation in this court within 6 weeks.

(D.G.DESHPANDE,J.)